

ASSEMBLY BILL NO. 442—COMMITTEE ON TAXATION

MARCH 25, 2019

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to the modified business tax. (BDR 32-1125)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing certain employers to receive a credit against the payroll taxes imposed on the employer if the employer pays all or part of the cost for an employee to receive academic or vocational instruction; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law imposes a tax, commonly known as the modified business tax, on  
2 financial institutions and other businesses based on the amount of wages paid to  
3 employees each calendar quarter. (NRS 363A.130, 363B.110)  
4 **Sections 1-4** of this bill authorize an employer to receive a credit against the  
5 modified business tax if the employer pays money to a qualified provider of a  
6 course of academic or vocational instruction on behalf of an employee of the  
7 employer. To qualify for this credit, the employer must: (1) maintain its principal  
8 place of business in this State; (2) employ not more than 30 full-time or full-time  
9 equivalent employees; and (3) have average annual gross receipts of not more than  
10 \$3.5 million for the 3 years immediately preceding the last day of the month  
11 following the calendar quarter for which the credit is claimed. Under **sections 1**  
12 **and 3** of this bill, the amount of the credit is equal to 50 percent of the amount paid  
13 by the employer to a qualified provider or \$500 per participating employee per  
14 year, whichever is less. To claim the credit, **sections 1 and 3** require the employer  
15 to notify the qualified provider of the employer’s intent to pay for the course and  
16 claim the credit. A provider who receives such notice must apply to the Department  
17 of Taxation for approval of the credit. If the Department approves the credit, the  
18 employee is required to commence the course within 30 days after the notice of  
19 the approval is received by the employer and the employer is required to make the  
20 payment for the course not later than 30 days after the provider requires payment  
21 for the course. **Sections 1 and 3** also provide that the total combined amount of  
22 credit which may be awarded to taxpayers under those sections is not more than  
23 \$2.5 million per fiscal year.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1       **Section 1.** Chapter 363A of NRS is hereby amended by  
2 adding thereto a new section to read as follows:

3       1. *Except as otherwise provided in subsection 3, a qualified*  
4 *employer who is required to pay a tax pursuant to NRS 363A.130*  
5 *may receive a credit against the tax otherwise due if the employer*  
6 *pays for an employee of the employer who is a Nevada resident to*  
7 *participate in a course of academic or vocational instruction*  
8 *provided by a qualified provider in the manner provided by this*  
9 *section.*

10       2. *A credit described in subsection 1 must be in an amount*  
11 *equal to the lesser of:*

12       (a) *Fifty percent of the total amount paid by the qualified*  
13 *employer to the qualified provider pursuant to subsection 1 during*  
14 *the year; or*

15       (b) *Five hundred dollars per year per employee of the qualified*  
16 *employer who participates in a course of academic or vocational*  
17 *instruction which is paid for as described by subsection 1.*

18       3. *A qualified employer is not eligible for the credit described*  
19 *in subsection 1 if the employer requires the employee to reimburse*  
20 *the employer or otherwise pay for any costs or expenses charged*  
21 *by the qualified provider in connection with the course of*  
22 *academic or vocational instruction.*

23       4. *To receive the credit authorized by subsection 1, a qualified*  
24 *employer who intends to pay for an employee to participate in a*  
25 *course of academic or vocational instruction must, before making*  
26 *such a payment, notify the qualified provider of the course of the*  
27 *employer's intent to make the payment and to seek the credit*  
28 *authorized by subsection 1. The provider shall, before accepting*  
29 *any such payment, apply to the Department of Taxation for*  
30 *approval of the credit authorized by subsection 1 for the payment.*  
31 *The Department shall, within 20 days after receiving the*  
32 *application, approve or deny the application and provide to the*  
33 *provider notice of the decision and, if the application is approved,*  
34 *the amount of the credit authorized. Upon receipt of notice that*  
35 *the application has been approved, the provider shall provide*  
36 *notice of the approval to the employer.*

37       5. *Not later than 30 days after the qualified employer*  
38 *receives the notice pursuant to subsection 4, the employee must*  
39 *commence the course of academic or vocational instruction.*  
40 *If the employee does not commence the course of academic or*  
41 *vocational instruction within that time, the qualified provider of*  
42 *the course shall provide notice of the failure to the Department*



1 and the employer forfeits any claim to the credit authorized by  
2 subsection 1.

3 6. Not later than the date on which the provider of the course  
4 of academic or vocational instruction requires payment for the  
5 course, the qualified employer must make the payment of money  
6 to the qualified provider. If the employer does not make the  
7 payment of money to the provider within that time, the provider  
8 shall provide notice of the failure to the Department and the  
9 employer forfeits any claim to the credit authorized by subsection  
10 1. An employer may not claim the credit pursuant to subsection 1  
11 until he or she has made the payment pursuant to this subsection.

12 7. The Department shall approve or deny applications for the  
13 credit authorized by subsection 1 in the order in which the  
14 applications are received.

15 8. The Department may, for each fiscal year, approve  
16 applications for the credit authorized by subsection 1 until the  
17 total amount of the credits authorized by subsection 1 and  
18 subsection 1 of section 3 of this act and approved by the  
19 Department is \$2,500,000. The amount of any credit which is  
20 forfeited pursuant to subsection 5 or 6 must not be considered in  
21 calculating the amount of credits authorized for any fiscal year.

22 9. A credit described in subsection 1 may not be applied  
23 retroactively. If the amount of the tax described in subsection 1  
24 and otherwise due from a qualified employer is less than the credit  
25 to which the employer is entitled pursuant to this section, the  
26 employer may, after applying the credit to the extent of the tax  
27 otherwise due, carry the balance of the credit forward for not more  
28 than 5 years after the end of the calendar year in which the  
29 payment is made or until the balance of the credit is applied,  
30 whichever is earlier.

31 10. As used in this section:

32 (a) "Qualified employer" or "employer" means an employer:

33 (1) That maintains its principal place of business in this  
34 State;

35 (2) That does not employ more than 30 full-time or full-  
36 time equivalent employees; and

37 (3) Whose average annual gross receipts do not exceed  
38 \$3,500,000 for the 3 years immediately preceding the last day of  
39 the month following the calendar quarter for which the credit is  
40 claimed.

41 (b) "Qualified provider" or "provider" means an institution of  
42 the Nevada System of Higher Education or an accredited  
43 vocational or technical school which provides a course of  
44 academic or vocational instruction.



1       **Sec. 2.** NRS 363A.130 is hereby amended to read as follows:  
2       363A.130 1. Except as otherwise provided in NRS 360.203,  
3 there is hereby imposed an excise tax on each employer at the rate  
4 of 2 percent of the wages, as defined in NRS 612.190, paid by the  
5 employer during a calendar quarter with respect to employment in  
6 connection with the business activities of the employer.

7       2. The tax imposed by this section:

8       (a) Does not apply to any person or other entity or any wages  
9 this State is prohibited from taxing under the Constitution, laws or  
10 treaties of the United States or the Nevada Constitution.

11       (b) Must not be deducted, in whole or in part, from any wages of  
12 persons in the employment of the employer.

13       3. Each employer shall, on or before the last day of the month  
14 immediately following each calendar quarter for which the  
15 employer is required to pay a contribution pursuant to  
16 NRS 612.535:

17       (a) File with the Department a return on a form prescribed by  
18 the Department; and

19       (b) Remit to the Department any tax due pursuant to this section  
20 for that calendar quarter.

21       4. In determining the amount of the tax due pursuant to this  
22 section, an employer is entitled to subtract from the amount  
23 calculated pursuant to subsection 1 a credit in an amount equal to 50  
24 percent of the amount of the commerce tax paid by the employer  
25 pursuant to chapter 363C of NRS for the preceding taxable year.  
26 The credit may only be used for any of the 4 calendar quarters  
27 immediately following the end of the taxable year for which the  
28 commerce tax was paid. The amount of credit used for a calendar  
29 quarter may not exceed the amount calculated pursuant to  
30 subsection 1 for that calendar quarter. Any unused credit may not be  
31 carried forward beyond the fourth calendar quarter immediately  
32 following the end of the taxable year for which the commerce tax  
33 was paid, and a taxpayer is not entitled to a refund of any unused  
34 credit.

35       5. An employer who makes a donation of money to a  
36 scholarship organization during the calendar quarter for which a  
37 return is filed pursuant to this section is entitled, in accordance with  
38 NRS 363A.139, to a credit equal to the amount authorized pursuant  
39 to NRS 363A.139 against any tax otherwise due pursuant to this  
40 section. As used in this subsection, "scholarship organization" has  
41 the meaning ascribed to it in NRS 388D.260.

42       6. *An employer who, during the calendar quarter for which a*  
43 *return is filed pursuant to this section, makes a payment of money*  
44 *which qualifies for a credit pursuant to section 1 of this act is*  
45 *entitled to a credit equal to the amount authorized pursuant to*



1 *section 1 of this act against any tax otherwise due pursuant to this*  
2 *section.*

3 **Sec. 3.** Chapter 363B of NRS is hereby amended by adding  
4 thereto a new section to read as follows:

5 *1. Except as otherwise provided in subsection 3, a qualified*  
6 *employer who is required to pay a tax pursuant to NRS 363B.110*  
7 *may receive a credit against the tax otherwise due if the employer*  
8 *pays for an employee who is a Nevada resident to participate in a*  
9 *course of academic or vocational instruction provided by a*  
10 *qualified provider in the manner provided by this section.*

11 *2. A credit described in subsection 1 must be in an amount*  
12 *equal to the lesser of:*

13 *(a) Fifty percent of the total amount paid by the qualified*  
14 *employer to the qualified provider pursuant to subsection 1 during*  
15 *the year; or*

16 *(b) Five hundred dollars per year per employee of the qualified*  
17 *employer who participates in a course of academic or vocational*  
18 *instruction which is paid for as described by subsection 1.*

19 *3. A qualified employer is not eligible for the credit described*  
20 *in subsection 1 if the employer requires the employee to reimburse*  
21 *the employer or otherwise pay for any costs or expenses charged*  
22 *by the qualified provider in connection with the course of*  
23 *academic or vocational instruction.*

24 *4. To receive the credit authorized by subsection 1, a qualified*  
25 *employer who intends to pay for an employee to participate in a*  
26 *course of academic or vocational instruction must, before making*  
27 *such a payment, notify the qualified provider of the course of the*  
28 *employer's intent to make the payment and to seek the credit*  
29 *authorized by subsection 1. The provider shall, before accepting*  
30 *any such payment, apply to the Department of Taxation for*  
31 *approval of the credit authorized by subsection 1 for the payment.*  
32 *The Department shall, within 20 days after receiving the*  
33 *application, approve or deny the application and provide to the*  
34 *provider notice of the decision and, if the application is approved,*  
35 *the amount of the credit authorized. Upon receipt of notice that*  
36 *the application has been approved, the provider shall provide*  
37 *notice of the approval to the employer.*

38 *5. Not later than 30 days after the qualified employer*  
39 *receives the notice pursuant to subsection 4, the employee must*  
40 *commence the course of academic or vocational instruction.*  
41 *If the employee does not commence the course of academic or*  
42 *vocational instruction within that time, the qualified provider of*  
43 *the course shall provide notice of the failure to the Department*  
44 *and the employer forfeits any claim to the credit authorized by*  
45 *subsection 1.*



1       6. *Not later than the date on which the provider of the course*  
2 *of academic or vocational instruction requires payment for the*  
3 *course, the qualified employer must make the payment of money*  
4 *to the qualified provider. If the employer does not make the*  
5 *payment of money to the provider within that time, the provider*  
6 *shall provide notice of the failure to the Department and the*  
7 *employer forfeits any claim to the credit authorized by subsection*  
8 *1. An employer may not claim the credit pursuant to subsection 1*  
9 *until he or she has made the payment pursuant to this subsection.*

10       7. *The Department shall approve or deny applications for the*  
11 *credit authorized by subsection 1 in the order in which the*  
12 *applications are received.*

13       8. *The Department may, for each fiscal year, approve*  
14 *applications for the credit authorized by subsection 1 until the*  
15 *total amount of the credits authorized by subsection 1 and*  
16 *subsection 1 of section 1 of this act and approved by the*  
17 *Department is \$2,500,000. The amount of any credit which is*  
18 *forfeited pursuant to subsection 5 or 6 must not be considered in*  
19 *calculating the amount of credits authorized for any fiscal year.*

20       9. *A credit described in subsection 1 may not be applied*  
21 *retroactively. If the amount of the tax described in subsection 1*  
22 *and otherwise due from a qualified employer is less than the credit*  
23 *to which the employer is entitled pursuant to this section, the*  
24 *employer may, after applying the credit to the extent of the tax*  
25 *otherwise due, carry the balance of the credit forward for not more*  
26 *than 5 years after the end of the calendar year in which the*  
27 *payment is made or until the balance of the credit is applied,*  
28 *whichever is earlier.*

29       10. *As used in this section:*

30       (a) *“Qualified employer” or “employer” means an employer:*

31       (1) *That maintains its principal place of business in this*  
32 *State;*

33       (2) *That does not employ more than 30 full-time or full-*  
34 *time equivalent employees; and*

35       (3) *Whose average annual gross receipts do not exceed*  
36 *\$3,500,000 for the 3 years immediately preceding the last day of*  
37 *the month following the calendar quarter for which the credit is*  
38 *claimed.*

39       (b) *“Qualified provider” or “provider” means an institution of*  
40 *the Nevada System of Higher Education or an accredited*  
41 *vocational or technical school which provides a course of*  
42 *academic or vocational instruction.*

43       **Sec. 4.** NRS 363B.110 is hereby amended to read as follows:

44       363B.110 1. Except as otherwise provided in NRS 360.203,  
45 there is hereby imposed an excise tax on each employer at the rate



1 of 1.475 percent of the amount by which the sum of all the wages,  
2 as defined in NRS 612.190, paid by the employer during a calendar  
3 quarter with respect to employment in connection with the business  
4 activities of the employer exceeds \$50,000.

5 2. The tax imposed by this section:

6 (a) Does not apply to any person or other entity or any wages  
7 this State is prohibited from taxing under the Constitution, laws or  
8 treaties of the United States or the Nevada Constitution.

9 (b) Must not be deducted, in whole or in part, from any wages of  
10 persons in the employment of the employer.

11 3. Each employer shall, on or before the last day of the month  
12 immediately following each calendar quarter for which the  
13 employer is required to pay a contribution pursuant to  
14 NRS 612.535:

15 (a) File with the Department a return on a form prescribed by  
16 the Department; and

17 (b) Remit to the Department any tax due pursuant to this chapter  
18 for that calendar quarter.

19 4. In determining the amount of the tax due pursuant to this  
20 section, an employer is entitled to subtract from the amount  
21 calculated pursuant to subsection 1 a credit in an amount equal to 50  
22 percent of the amount of the commerce tax paid by the employer  
23 pursuant to chapter 363C of NRS for the preceding taxable year.  
24 The credit may only be used for any of the 4 calendar quarters  
25 immediately following the end of the taxable year for which the  
26 commerce tax was paid. The amount of credit used for a calendar  
27 quarter may not exceed the amount calculated pursuant to  
28 subsection 1 for that calendar quarter. Any unused credit may not be  
29 carried forward beyond the fourth calendar quarter immediately  
30 following the end of the taxable year for which the commerce tax  
31 was paid, and a taxpayer is not entitled to a refund of any unused  
32 credit.

33 5. An employer who makes a donation of money to a  
34 scholarship organization during the calendar quarter for which a  
35 return is filed pursuant to this section is entitled, in accordance with  
36 NRS 363B.119, to a credit equal to the amount authorized pursuant  
37 to NRS 363B.119 against any tax otherwise due pursuant to this  
38 section. As used in this subsection, "scholarship organization" has  
39 the meaning ascribed to it in NRS 388D.260.

40 ***6. An employer who, during the calendar quarter for which a***  
41 ***return is filed pursuant to this section, makes a payment of money***  
42 ***which qualifies for a credit pursuant to section 3 of this act is***  
43 ***entitled to a credit equal to the amount authorized pursuant to***  
44 ***section 3 of this act against any tax otherwise due pursuant to this***  
45 ***section.***



1       **Sec. 5.** This act becomes effective upon passage and approval  
2 for the purpose of adopting any regulations or performing any other  
3 preparatory administrative tasks necessary to carry out the  
4 provisions of this act, and on January 1, 2020, for all other purposes.

